

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

GERALD ALLEN PERRY

§

VS.

§

CIVIL ACTION NO. 1:06cv841

RODNEY JOHNSON

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Gerald Allen Perry, an inmate at the Stiles Unit, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983 against Rodney Johnson.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends plaintiff's complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

Plaintiff objects to the magistrate judge's determination that he is not in imminent danger of serious physical injury. Plaintiff states that his allegations of a severe shortage of security officers and rampant homosexuality are sufficient to show that he is in imminent danger of serious physical

injury. After careful consideration, however, the court concludes plaintiff's factual allegations are not sufficient to demonstrate he was in imminent danger of serious physical injury at the time he filed the complaint.

Further, plaintiff states that the court erred when it dismissed one of his prior cases as frivolous. However, the court's dismissal as frivolous was not appealed. The doctrine of *res judicata* prevents plaintiff from relitigating the determination that one of his prior cases was frivolous. *Kinnell v. Graves*, 265 F.3d 1125, 1128 (10th Cir. 2001). Plaintiff's objections are therefore without merit. Accordingly, plaintiff is barred from pursuing his claims *in forma pauperis* pursuant to 28 U.S.C. § 1915(g).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this **10** day of **July, 2007**.



Ron Clark, United States District Judge